

DECLARATION OF C.R. ADDY, ESQ.

EXHIBIT H

U.S. DIST. CLERK'S OFFICE
U.S. DISTRICT COURT
U.S. NO. 110-12105
T. NO. 100 OF 200
T. NO. 411 of 2006
To the High Court of Canada
Original Side

United Linen Public Co. Ltd. & Assn
V. B. Industries Pvt. Ltd. & Ors

**SECTION
The Human Rights Parish Clerical Council
AND
The Human Rights Clerical Muslim Society**

Dok. Nr. 103 Dokumentiert: 2006

Mr. S.N. Moskowitz, Sr. Adv.
Mr. Romusko Banerjee, Adv.
Mr. Salarp Banerjee, Adv.
Mr. Suroosh Roy, Adv.
appeared for the Appellant
Mr. Subrata Chatterji, Sr. Adv.,
Mr. Tinku Basu, Adv.
Mr. Ash Roy, Adv.
for the Respondent nos. 1 and 3
Mr. Dilip Mitra, Sr. Adv.,
Mr. Sanjiv Chatterjee, Adv.
appeared for J.M. Dutt & Co.

Desired Order

The Court, on 26th September, 2005, an order freezing the vessel M.V. Ethai
Maven was passed by the Court. That order at the instance of the plaintiff respondent
and alleged that its character and/or temporary owner

of the vessel M.V. Ethia Nave. It was also alleged that the vessel M.V. Ethia Nave is a sister ship of the vessel M.V. IKAL. After the order was given before me, the ship was actually arrested. The defendant no. 1 on 5th October, 2006 applied for vacating the arrest. The Learned Judge refused to vacate the order on the order dated 26th September, 2006. The Learned Judge refused to vacate the order on the ground that the defendant no. 3 in the meantime had appeared and offered to secure the claim of the plaintiff so the time of B.L.I. arose 24 hours but defendant did not do so. The Learned Trial Judge has issued directions for filing affidavits. Agreed by the court, the defendant no. 1 has come up before the Court Mr. Mahender, Learned Senior Advocate appearing for the appellant defendant no. 1 submitted that under Article 3 and 8 of the International Convention on the Arrest of Ships, 1992, the vessel could not have been arrested. Moreover, no document in support of the allegation that M.V. Ethia Nave is a sister ship of M.V. IKAL was produced nor was any evidence adduced by the plaintiff in the affidavit application to show that the defendant no. 3 was the applicant giving of the vessel in question. Mr. Mahender drew our attention to a documentary evidence in order to show that M.V. Ethia Nave has no sister ship. He also drew our attention to documents to show that the defendant no. 3 was only a time charterer and not a claimed owner in respect of the vessel.

Mr. Sarker, Learned Senior Advocate appearing for the plaintiff respondent maintained that the defendant no. 3 is colluding with the defendant no. 1. The defendant no. 3 appeared before the Trial Court offered to furnish security and not ultimately do so but filed a petitioning in the Court of Appeal and has obtained an order attaching more than 4 months worth of the plaintiff no. 1. Mr. Sarker drew our attention to the copies of

the pleadings made in the Courts in America wherein there is no allegation that the defendant no. 3 is interested in the vessel which has wrongfully been arrested by the plaintiff and on that basis the plaintiff is under attaching more than 1 lakh dollars. But further submitted that there is no question of vacating the order of arrest because the Plaintiff used to be listed and gone into on merits by the Trial Court. He also submitted that even if the order of arrest is vacated, the order issued is the same relating to the Summons defendant should be sustained because the business do not belong to the defendant no. 1 but they belong to the defendant no. 3.

We have heard and considered the submissions made by the Learned Counsel appearing for the parties. There is no dispute as regards the fact that no document in support of the allegation that the defendant no. 1 was interested in the defendant no. 1 who pleaded before the Trial Court. mere allegation is not enough to the advance of adequate evidence in support of the allegation as to the defendant no. 1 being the owner ship of M.V. KHALA as regards the disputed ownership of the vessel M.V. Khalal because of the defendant no. 3, an order of arrest could not have been passed. The fact that the monies belonging to the plaintiff no. 1 have been attached by the defendant no. 3 do not really advance the case of the plaintiff because there is nothing to show before us that the defendant no. 1 is in any way liable for the dues owed by the defendant no. 3. The Convention relied upon by Mr. Mukherjee also appears to support the case of the appellant. These are all however, prima facie views expressed by us and should not stand in the way of the Trial Court taking different view after the affidavits are exchanged. For

ends of justice and to secure the appellant from possible loss which is likely to result from
the returning of the order of arrest, we pass the following proce-

In the event a Bank Guarantee for a sum of 10,10 Indian Rupees is furnished by the
plaintiff which is used from day, the order dated 26th September, 2006 will be
continued. In that event the Learned Trial Court shall try to dispose of the application as
early as possible after the affidavits are exchanged. In default of furnishing such security,
the order dated 26th September, 2006 shall stand vacated.

We are unable to ignore the hardship because the appellant has been exposed to loss
and damage by reason of the order of arrest. In the event the parties come to an amicable
and friendly arrangement, the appellant will have recourse to the court to recover the
loss and damage to him. We, therefore, restrain from passing any order as regards damages
Thus in default of furnishing security, the order dated 26th September, 2006 as extended
for three months shall stand vacated in its entirety.

There will be an order in terms of prayer (3).

All understandings are disengaged.

This appeal and the application are both disposed off by treating the same as in the
day's list.

[Signature]

Register, Marshall and all parties are to set on a copy thereof copy of his
document under on the usual uncertainties.

See Twp

11/11/06

Robert Marshall

*eff. 11/11/06
and
2d) Stark Mohan Singh*